

CHAPTER 8.48

LINCOLN SMOKEFREE AIR ACT

(Operative date: July 1, 2004)

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8.48.010 Title.

This Chapter shall be known as the Lincoln Smokefree Air Act. (Ord. 18285 §1; December 15, 2003; *operative date: July 1, 2004*).

8.48.020 Purpose.

The City Council does hereby find and declare that the purpose of this Chapter is to protect the health and welfare of employees and the public by requiring nonsmoking and smoking areas to be separated in all places of employment and public places.

It is therefore declared to be the public policy of this City to encourage places of employment and public places to eliminate and prevent the health and safety risks posed by smoking at places of employment and public places. The City Council authorizes the Health Director of the Lincoln-Lancaster County Health Department and law enforcement to administer and enforce this Chapter within the City of Lincoln. (Ord. 18285 §2; December 15, 2003; *operative date: July 1, 2004*).

8.48.030 Definitions; General Provisions.

For the purposes of this Chapter, the following words and phrases shall have the meaning ascribed to them by this Chapter. (Ord. 18285 §3; December 15, 2003; *operative date: July 1, 2004*).

8.48.033 Definition; Bar.

Bar shall mean any indoor area serving as a place of employment or a public place licensed for the sale and service of alcoholic beverages for on-premises consumption and where gross receipts from the sale and service of food constitute less than sixty percent (60%) of gross receipts from all business activity conducted on the premises. (Ord. 18285 §3.3; December 15, 2003; *operative date: July 1, 2004*).

8.48.040 Definition; Employed.

Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish goods or services. (Ord. 18285 §4; December 15, 2003; *operative date: July 1, 2004*).

8.48.050 Definition; Employee.

Employee shall mean a person who is employed by an employer in consideration for direct or indirect monetary wage(s), profit, or other remuneration. (Ord. 18285 §5; December 15, 2003; *operative date: July 1, 2004*).

8.48.060 Definition; Employer.

Employer shall mean a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, co-op, firm, trust, association, organization, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, who employs one or more employees. (Ord. 18285 §6; December 15, 2003; *operative date: July 1, 2004*).

8.48.070 Definition; Guestroom or Suite.

Guestroom or suite shall mean sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their exclusive transient occupancy including, but not limited to guestrooms or suites in hotels, motels, inns, lodges, or other such establishments. (Ord. 18285 §7; December 15, 2003; *operative date: July 1, 2004*).

8.48.080 Definition; Health Director.

Health Director shall mean the Director of the Lincoln-Lancaster County Health Department or authorized representative(s). (Ord. 18285 §8; December 15, 2003; *operative date: July 1, 2004*).

8.48.090 Definition; Indoor Area.

Indoor area shall mean the area bordered on all sides by a floor to ceiling wall is continuous and solid except for closeable entry/exit doors and windows. (Ord. 18285 §9; December 15, 2003; *operative date: July 1, 2004*).

8.48.100 Definition; International No-Smoking Symbol.

International no-smoking symbol shall mean a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. (Ord. 18285 §10; December 15, 2003; *operative date: July 1, 2004*).

8.48.110 Definition; Place of Employment.

Place of employment shall mean an indoor area under the control of a proprietor that an employee accesses as part of the course of employment without regard to whether work is occurring at any given time. The indoor area shall include, but is not limited to, work areas, employee breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence shall not be considered a “place of employment”. (Ord. 18285 §11; December 15, 2003; *operative date: July 1, 2004*).

8.48.120 Definition; Proprietor.

Proprietor shall mean any employer, owner, operator, supervisor, manager or any other person who controls, governs, or directs the activities in a place of employment or public place. (Ord. 18285 §12; December 15, 2003; *operative date: July 1, 2004*).

8.48.130 Definition; Public Place.

Public Place shall mean an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence shall not be considered a “public place”. (Ord. 18285 §13; December 15, 2003; *operative date: July 1, 2004*).

8.48.140 Definition; Smoking Room.

Smoking room shall mean a room designated by a proprietor pursuant to Section 8.48.170(4) within a place of employment or public place where smoking may be allowed. (Ord. 18285 §14; December 15, 2003; *operative date: July 1, 2004*).

8.48.150 Definition; Smoke or Smoking.

Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the possession of any lighted cigarette, cigar, or pipe, regardless of its composition. (Ord. 18285 §15; December 15, 2003; *operative date: July 1, 2004*).

8.48.155 Definition; Smoke Shop.

Smoke shop shall mean any place of employment or public place devoted primarily to the sale of tobacco products and/or smoking accessories. (Ord. 18285 §15.5; December 15, 2003; *operative date: July 1, 2004*).

8.48.160 Smoking Prohibited; Exceptions.

It shall be unlawful for any person to smoke in a place of employment or a public place, except as designated by a proprietor pursuant to Section 8.48.170. (Ord. 18285 §16; December 15, 2003; *operative date: July 1, 2004*).

8.48.170 Proprietor to Prohibit Smoking; Exceptions.

(a) It shall be unlawful for a proprietor of any place regulated by this Chapter to allow smoking in any place of employment or public place, except as follows:

(1) In guestrooms or suites may be designated as an indoor area where smoking is allowed, however, the number of rooms or suites designated for smoking must be reasonably proportionate to the preference of the users.

(2) At times when a scientific or analytical laboratory, governed by state or federal law, or a laboratory at a college or university approved by the Nebraska Coordinating Commission for Post Secondary Education, is conducting research into the health effects of smoking, smoking may be allowed as part of the study.

(3) In an employee breakroom that has been designated as an indoor area where smoking is allowed ("smoking breakroom") by employees, provided that the following requirements are met:

(i) Only employees of the proprietor shall be allowed to smoke within the smoking breakroom; and

(ii) An employee breakroom designated for nonsmoking ("nonsmoking breakroom") shall be provided. It shall have at least the same size and amenities as the smoking breakroom; and

(iii) The smoking breakroom shall not serve as a work area for any employee and no employee shall be required to enter the smoking breakroom in order to reach the employee's work area. This prohibition shall not apply to employees providing janitorial and maintenance services within the smoking breakroom; and

(iv) The smoking breakroom shall be separated from the rest of the place of employment or public place, and from any other adjacent or connected place of employment or public place, by solid walls, floors, ceiling, and doors equipped with automatic closing mechanisms; and

(v) The smoking breakroom shall be at negative air pressure with respect to the rest of the place of employment or public place, and from any other adjacent or connected place of employment or public place, so as to prohibit the flow of air from the smoking breakroom into the place of employment or public place; and

(vi) The smoking breakroom's air shall be immediately exhausted to the outside of the building by an exhaust fan rather than being recirculated within the smoking breakroom or any place of employment or public place; and

(vii) No person under the age of eighteen shall be allowed to enter the smoking breakroom.

(4) In a single smoking room within any place of employment or public place, provided that it meets the following requirements:

(i) The smoking room shall be separated from the rest of the place of employment or public place, from any other adjacent or connected place of employment or public place, by solid walls, floors, ceiling, and doors equipped with automatic closing mechanisms; and

(ii) The smoking room shall be at negative pressure with respect to any adjacent or connected place of employment or public place to prohibit the flow of air from the smoking room into the nonsmoking portion of the place of employment or public place; and

(iii) The smoking room's air shall be immediately exhausted to the outside of the building by an exhaust fan rather than being recirculated within the smoking room or any place of employment or public place; and

(iv) The maximum size of the smoking room shall be reasonably proportionate to the preference of the users of the place of employment or public place; and

(v) Any service or amenity which the place of employment or public place chooses to provide to the public or employees within the smoking room shall also be available to the public or employees in the rest of the place of employment or public place. Service or amenity shall include, but is not limited to television, musical entertainment, and seating; and

(vi) No member of the public nor any employee shall be required to enter the smoking room in order to access common areas of the place of employment or public place, including but not limited to, hallways, restrooms, lobbies, and waiting rooms; and

(vii) No person under the age of eighteen shall be allowed to enter the smoking room.

(5) Smoking by an actor or actress as part of the character role in a theatrical production, if smoking is an integral part of the story.

(6) In a smoke shop, provided that it meets the following requirements:

(i) The smoke shop shall be separated from any other place of employment or public place by solid walls, floors, ceiling, and doors equipped with automatic closing mechanisms; and

(ii) The smoke shop shall be at negative pressure with respect to any adjacent or connected place of employment or public place to prohibit the flow of air from the smoke shop into another place of employment or public place; and

(iii) The smoke shop shall be immediately exhausted to the outside of the building by an exhaust fan rather than being recirculated within the smoke shop; and

(iv) No person under the age of eighteen shall be allowed to enter the smoke shop; and

(v) The smoke shop shall not sell or serve alcoholic beverages.

(7) In a bar, provided that it meets the following requirements:

(i) The licensed manager of the bar shall have placed on file in the office of the City Clerk an affidavit verifying that the gross receipts from the sale and service of food constitute less than 60% of gross receipts from all business activity conducted on the premises. If the proprietor of the bar is a different person than the licensed manager, the proprietor shall also have the duty to file the same affidavit; and

(ii) The affidavit(s) shall be renewed at least annually, upon the earlier of the filing of an application for renewal of the liquor license for the bar, or the filing of an application for designation of a new manager for the bar; and

(iii) All employees shall have been informed of the fact that smoking is permitted on the premises and that the employee will be exposed to the health risks associated with smoking whether or not the employee smokes.

(iv) No person under the age of eighteen shall be allowed to enter a bar.

(b) The proprietor shall have an affirmative defense to any violation of this section if the proprietor (1) verbally requested a person to refrain from smoking within a public place or place of employment where smoking is prohibited; and (2) took every reasonable step to prohibit the person from smoking. "Reasonable step" shall not require the physical ejection of a person by the proprietor from the place of employment or public place.

(c) This Chapter shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws. (Ord. 18285 §17; December 15, 2003; *operative date: July 1, 2004*).

8.48.180 Signs Required; Requirements.

(a) If smoking is not allowed by this Chapter and/or by the proprietor, the proprietor shall post at least one sign at all entrances of the place of employment or public place used by employee(s) or the public containing only the international no smoking symbol or only the words "no smoking," or only the words "no smoking under penalty of law."

(b) If smoking is allowed in conformance with this Chapter and by the proprietor, the proprietor shall post at least one sign at all entrances of the place of employment or public place used by employee(s) or the public containing only the words "no smoking except in designated area under penalty of law," and

(1) Each guestroom or suite designated as an indoor area where smoking is allowed shall have a sign posted which indicates smoking is allowed within the guestroom or suite. The sign shall include the words "smoking allowed." Each letter shall be one inch or larger in size. There shall be a separately posted sign on each entrance of the guestroom or suite.

(2) Each indoor area where research is being conducted, pursuant to Section 8.48.170(2), that requires a person to smoke, shall have a temporary sign posted on all entrances used by employee(s) or the public indicating that smoking is being allowed for the purposes of the research.

(3) Each smoking breakroom, designated pursuant to Section 8.48.170(3), and each smoking room designated, pursuant of Section 8.48.170(4) shall have a sign posted indicating that smoking is allowed within the smoking breakroom or smoking room. The signs shall include the words "smoking allowed." Each letter shall be one inch or larger in size. There shall be a separately posted sign on each entrance to the smoking breakroom or smoking room.

(c) Proprietors shall conspicuously post or display required signs so that the signs are readily viewable by employee(s) and the public. (Ord. 18285 §18; December 15, 2003; *operative date: July 1, 2004*).

8.48.190 Enforcement.

The Health Director and law enforcement agencies are hereby authorized to inspect a place of employment or public place at any reasonable time to determine compliance with this Chapter. (Ord. 18285 §19; December 15, 2003; *operative date: July 1, 2004*).

8.48.200 Violations and Penalties.

(a) A person who smokes in a place of employment or a public place in violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of up to five hundred dollars (\$500) together with costs and/or up to six (6) months in jail with:

- (1) A minimum fine of one hundred dollars (\$100) and costs for the first offense.
- (2) A minimum fine of two hundred dollars (\$200) and costs for the second offense.
- (3) A minimum fine of five hundred dollars (\$500) and costs for the third and subsequent

offenses.

(b) A proprietor of a place of employment or public place upon whom a duty is placed by the provisions of this Chapter, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of up to five hundred dollars (\$500) together with costs and/or up to six (6) months in jail with:

- (1) A minimum fine of one hundred dollars (\$100) and costs for the first offense.
- (2) A minimum fine of two hundred dollars (\$200) and costs for the second offense.
- (3) A minimum fine of five hundred dollars (\$500) and costs for the third and subsequent

offenses.

(c) Each individual violation and each day that the violation continues to exist shall constitute a separate and distinct offense and shall be punishable as such.

(d) Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Chapter by an officer, manager, supervisor, agent, or employee of any proprietor, if said act or omission is made with the authorization, knowledge, or approval of the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said proprietor shall be punishable in the same manner as if said act or omission had been committed by such proprietor personally.

(e) The violations of any of the provisions of this Chapter by a proprietor shall be cause sufficient to justify the revocation or suspension of any permit or license that the proprietor has received from the City of Lincoln for the place of employment or public place. Such revocation or suspension shall be cumulative with the penalty imposed by this Chapter, any other ordinance of the City of Lincoln, and any other penalty or remedial consequence imposed by law. (Ord. 18285 §20; December 15, 2003; *operative date: July 1, 2004*).

8.48.210 Severability.

Each section and subsection of this Chapter is hereby declared to be independent of every other section or subsection of this Chapter and invalidity of any section or subsection of this Chapter shall not invalidate any other section or subsection thereof. (Ord. 18285 §21; December 15, 2003; *operative date: July 1, 2004*).